even where the holder in due course disposes of the note to an agent of the party to the fraud. The court in the instant case decided correctly, relying on these principles; for the bank is properly in equity. Nevertheless, the indirect result accomplished is to benefit the indorser who became such merely to accommodate McDannald in securing money for stock gambling. The logical basis probably is that the knowledge of Carpenter did not affect the validity of the note, as he did not directly secure the lending of the money.

Breach of Marriage Promise—What Constitutes a Waiver.—Defendant agreed to marry the plaintiff on a certain day but failed to appear at the time set; afterwards he wrote a letter giving excuses. The parties continued a correspondence in regard to setting a new date but seemed unable to agree on any time and finally all efforts ceased and the plaintiff commenced suit. *Held,* that the plaintiff by her efforts to arrange another date had waived the breach and her right of action. *Falk* v. *Burke,* (Kans. 1914), 143 Pac. 498.

This rule was first established in *Kelley* v. *Renfro,* 9 Ala. 325, where the court said that "omission to marry on a particular day is not a breach" of the contract, but that the contract continues until one party or the other evinces an unwillingness to proceed." In that case it was held that mere silence did evince sufficient unwillingness. The Kansas court, while saying that they follow the Alabama case, seem to hold that an omission to appear on the day fixed is enough unless qualified by further acts, and then say that the facts in this case do amount to a waiver. This seems to be a better doctrine as there is no doubt that by failing to appear at a time set a party to a marriage contract does break the contract. *Wanecek* v. *Kratky,* 69 Neb. 770; *Wolters* v. *Schultz,* 21 N. Y. Supp. 768; *Lohner* v. *Caldwell,* 15 Tex. Civ. App. 444. The Alabama case and the principal case seem to be the only ones where the question of a waiver of the breach arose and the instant case the only one which has decided what constitutes such waiver; whether other courts would hold these facts sufficient to indicate a waiver is open to question.

Carriers—Interstate Commerce Act.—The plaintiff railway company had duly filed with the Interstate Commerce Commission its carriage charges for dressed meats, exclusive of icing charges. It had further filed with the Commission a tariff sheet which provided that it would upon request furnish refrigeration, charging therefor the actual cost, including labor, but not less than $2.50 per ton of 2,000 pounds. These services were performed for it by Swift & Co., competitors of the defendant packing company. The railway company sues the packing company for such refrigerating charges on the basis of $2.50 per ton. On appeal from a decision in favor of plaintiff, *held* that defendant was liable. *Cudahy Packing Co.* v. *Grand Trunk Western Ry., Co.,* (C. C. A. 7th Circuit, 1914), 215 Fed. 93.

An amendment to the Interstate Commerce Act defines transportation so as to include all services in connection with the refrigerating of the property transported, 34 U. S. Stat. p. 584. A carrier has the right to make sepa-

rate icing charges if these have not already been included in the general rate and are in themselves reasonable; *Knudsen-Ferguson Fruit Co.* v. *Mich. Cent. R. Co.*, 148 Fed. 968. The rate schedules and classifications filed with the Interstate Commerce Commission are binding upon both the shippers and the carriers, *Smith* v. *Great Northern Ry. Co.* 15 N. D. 195, 107 N. W. 56. By holding itself out voluntarily as ready to ice carload shipments, the plaintiff had brought itself within the supervisory and regulatory provisions of the Act. In the present case the tariff filed with the Commission was uncertain as to the amount to be charged for icing cars, and it would seem that the defendant had contended that this would make the whole provision void, and consequently the carrier could not recover on the basis of the $2.50 charge. The court, however, applied to the tariff sheet the principle of interpretation familiar in the case of statutes, that where a part is void, it will not invalidate the remainder unless that is so connected with the void part that it is apparent that it was the intention of the legislators to have the whole stand, or none of it. In this case the fact that a part was void for uncertainty did not vitiate the remainder. Consequently the plaintiff was allowed to recover on the basis of the valid charge in the tariff sheet.

CARRIERS—TWO CENT PASSENGER FARE.—An order of the Arkansas Railway Commission carrying out the provisions of a state statute, ARKANSAS LAWS 1907, page 9, established a two cent passenger fare on intrastate passenger traffic. The present case was an appeal by the Commission from an order granting a temporary injunction against the enforcement of the said rate. It was admitted in the case that the complainant railway company had conducted its intrastate passenger traffic in an economical manner. It was further admitted that the effects of carrying out the provisions of the Commission's orders had during a two year's trial shown that the receipts from such traffic had been insufficient to cover legitimate operating expenses, exclusive of any return on the property used. *Held*, the temporary injunction should be affirmed. *Bellamy* v. *Missouri & N. A. R. Co.* (C. C. A. 8th Circuit, 1914), 215 Fed. 18.

Although the real question before the court was whether the lower court had illegally exercised its discretion in granting a temporary injunction in the case, it became necessary for the court in deciding this question to decide several matters of substantive law involved in questions of this sort. Public service companies are subject to rate regulation, *Munn* v. *Illinois*, 94 U. S. 113. Such rate regulation cannot however be extended so as to amount to a deprivation of property without due process of law. When the effect of putting into effect rates is clearly such as to amount to preventing the company from making operating expenses, their enforcement can be enjoined, *Covington & L. Turnpike Road Co.* v. *Sandford*, 164 U. S. 578. When the effect is a matter of doubt, it has sometimes been held that before a court will declare them confiscatory and the regulation unconstitutional, they will have to be tested by experience, and even a temporary injunction has been refused, *Chi., B. & Q. R. Co.* v. *Dey*, 38 Fed. 656; *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1. Where however, experience under such rates has